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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 5248
DATE COMPLAINT FILED: 2/25/02
DATE OF NOTIFICATION: 3/4/02
DATE ACTIVATED: 6/11/02

EXPIRATION OF SOL: 9/1/02¹

COMPLAINANTS: Judicial Watch, Inc.
through Larry Klayman, Chair and General Counsel
and Thomas J. Fitton, President

RESPONDENTS: Bush-Cheney 2000, Inc.
and David Herndon, as treasurer
Bush for President, Inc.
and David Herndon, as treasurer
Enron Corporation
Ralph E. Reed
Karl Rove

RELEVANT STATUTES: 2 U.S.C. § 431(8)(A)
2 U.S.C. § 431(8)(A)(ii)
2 U.S.C. § 431(13)(B)
2 U.S.C. § 434(b)(2)(A)
2 U.S.C. § 434(b)(3)(A)
2 U.S.C. § 434(b)(4)(A)
2 U.S.C. § 434(b)(5)(A)
2 U.S.C. § 441b(a)
2 U.S.C. § 441b(b)(2)
11 C.F.R. § 100.7(a)(1)(iii)(A)
11 C.F.R. § 100.7(b)(1)(i)
11 C.F.R. § 100.8(b)(1)(i)
11 C.F.R. § 101.3
11 C.F.R. § 104.13(a)

¹ Pursuant to OGC convention, the date listed here and in the Case Management and Enforcement Priority Systems is the earliest date that any activity could have been lost to the statute of limitations, as it appeared at the time of notification.

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

This matter was generated by a complaint filed by Judicial Watch, Inc., through its chair and general counsel, Larry Klayman, and its president, Thomas J. Fitton, on February 25, 2002.

The complaint alleges that Enron Corporation's retention of Century Strategies, a firm headed by noted political consultant Ralph E. Reed, was in fact a disguised in-kind contribution to Bush for President, Inc., Bush-Cheney 2000, Inc., or both. It also alleges that the committees failed to report this contribution. After reviewing the available information, this report concludes that the allegations have no merit and recommends findings of no reason to believe.

II. FACTUAL AND LEGAL ANALYSIS

A. Identities of Respondents and Related Principal Actors

1. Bush Committees and Related Actors

George W. Bush, not a respondent in this matter, is the President of the United States.

Prior to being elected President, President Bush served as Governor of Texas, an office he held at all times relevant to this matter. He was a successful candidate for reelection as governor in 1998.

Bush for President, Inc. ("Primary Committee") was the principal campaign committee of Bush's campaign for the Republican presidential nomination in the 2000 presidential election. It registered with the Commission on March 8, 1999.² Bush-Cheney 2000, Inc. ("General Committee") registered with the Commission on August 4, 2000 as the principal campaign

² The Primary Committee's original name was the "Governor George W. Bush Presidential Exploratory Committee;" it changed its name to its current name on July 2, 1999.

committee of Bush's general election campaign for President of the United States in the 2000 presidential election. David L. Herndon is named as a respondent in his official capacity as treasurer of both committees.

Karl Rove currently serves on the White House Staff as Senior Advisor to the President. Prior to 1999, he was the principal of a political consulting firm known as Karl Rove & Company located in Austin, Texas. Karl Rove & Company was a, if not the, principal consultant to then-Governor Bush's reelection campaign in 1998. <http://www.austinchronicle.com/issues/vol18/issue21/pols.lege.html>.

2. Enron Corporation

In a recent court filing, the Securities and Exchange Commission described Enron Corporation ("Enron") in the following manner:

Enron Corp. is an Oregon corporation with its principal place of business in Houston, Texas . . . Among other businesses, Enron was engaged in the purchase and sale of natural gas, construction and ownership of pipelines and power facilities, provision of telecommunication services, and trading in contracts to buy and sell various commodities. Prior to December 2, 2001, Enron was reportedly the seventh largest corporation in the United States. On December 3, 2001, Enron filed for bankruptcy protection under Chapter 11 of the U.S. Bankruptcy Code.

Complaint, *SEC v. Kopper*, Civil Action No. H-02-3127 (S.D. Tex. filed Aug. 21, 2002) at ¶ 9.

3. Ralph E. Reed and Related Actors

Ralph E. Reed is a well-known political consultant and is currently chairman of the Georgia Republican Party. Prior to 1997 he was Executive Director of the Christian Coalition. On April 23, 1997 – apparently the day after appearing with then-Governor Bush at a Christian Coalition convention in Austin, Texas – Reed announced plans to leave the Christian Coalition and form his own political consulting firm. *National Briefing – Ralph Reed: Leaving Christian Coalition to Start Firm*, The Hotline, April 23, 1997; *Governor Report – Texas: Bush Rallies For*

1 *Tax Debate Today*, The Hotline, April 23, 1997. It appears that Reed left the Christian Coalition
2 some time in mid-1997, and at roughly that time he founded a consulting firm known as
3 "Century Strategies."

4 Century Strategies ("Century"), not a respondent in this matter, is a Delaware limited
5 liability company with its principal place of business in Duluth, Georgia. Reed is listed on the
6 firm's web site as its president. Century describes itself as "a full-service firm providing
7 Strategic Business Development Assistance, Organizational Development, Direct Mail and Voter
8 Contact Services, Fundraising Management, Research and Analysis, Creative Media Planning,
9 Public and Media Relations, and List Management and Procurement" to both business and
10 political clients. <http://www.censtrat.com/index.cfm>.

11 Capitol Media ("Capitol"), also not a respondent in this matter, is a Georgia limited
12 liability company with its principal place of business in Duluth, Georgia at the same address as
13 Century. This Office has discovered little about this firm from publicly available information
14 beyond the fact that the Primary Committee made a number of disbursements to it in 2000.

15 **B. Facts**

16 **1. The Enron-Century Contracts**

17 Between 1997 and 2001, Enron and Century entered into three contracts. The first was
18 dated September 30, 1997, shortly after Century opened for business. Under this contract,
19 Century was to "advise Enron on legislative issues and developments concerning the
20 restructuring of the electric utility business" and "provide such related government relations
21 services as may be specified by the Responsible Manager [for Enron]." In return, Enron was to
22 pay Century "\$114,000 payable in 12 equal monthly installments of \$9,500.00" plus expenses.
23 Although Enron had the right to terminate the agreement on 30 days' notice, "early success in

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1 this representation" was not to "result in early termination." MUR 5248, Enron Response,
2 Attachment A.

3 The second contract between Enron and Century was dated October 6, 2000, and was
4 retroactive to September 1, 2000. Under this contract, Century was to "provide ongoing advice
5 and counsel to Enron on public policy and public affairs, including but not limited to staffing
6 [Enron's] Washington governmental affairs office, creating a pro-competition grassroots
7 infrastructure, assembling a public affairs advisory group, and long-range planning," as well as
8 such "related governmental relations services as may be specified by the Responsible Manager(s)
9 or Attorney(s)[,]" through February 28, 2001. In return, Century was to pay Enron "a total
10 amount of \$10,000 per month for the first three months and \$15,000 per month for the remaining
11 three months." MUR 5248, Enron Response, Attachment C.

12 Enron and Century entered into a third contract dated July 19, 2001, that was retroactive
13 to June 15, 2001. Under this contract, Century was to "provide ongoing advice and counsel to
14 Enron on public policy and public affairs, including but not limited to creating a pro-competition
15 grassroots infrastructure, assembling a public affairs advisory group, and long-range planning,"
16 as well as such "related governmental relations services as may be specified by the Responsible
17 Manager(s) or Attorney(s)." Enron was to pay Century \$30,000 per month plus expenses. The
18 anticipated duration of the contract was through June 30, 2002. MUR 5248, Enron Response,
19 Attachment D. However, the agreement was apparently terminated in November 2001, MUR
20 5248, Enron Response at 4, or shortly after the appearance of press accounts regarding
21 accounting irregularities at Enron.

2. Rove's Alleged Role In the 1997 Contract

a. Press Accounts From Early 2002

The complaint in this matter is based almost entirely on a news article in the New York Times of January 25, 2002, entitled "Associates of Bush Aide Say He Helped Win Contract." MUR 5248, Complaint, Exhibit 1. The article quotes unnamed "close associates of Mr. Rove" as stating that Rove told them that he had recommended Reed's firm to Enron in 1997, and that he had done so as a means of keeping Reed's favor for a potential Bush presidential candidacy while avoiding public relations problems that would supposedly have occurred had Bush openly put Reed or his firm on the Bush payroll. One of the unnamed sources, identified as a "friend of Mr. Bush," allegedly told Times reporter Richard L. Berke that in July 1997 "Karl [Rove] told me explicitly of his concerns to take care of Ralph . . . It was important for Karl's power position to be the guy who put this together for Ralph. And Bush wanted Ralph available to him during the presidential campaign." At that early stage, this person reportedly said, Rove did not want a connection between Bush and Reed to become public, because "Ralph was so evangelical and hard right, and Karl thought it sent the wrong signal." Another unnamed source, identified as "another Republican," reportedly told Berke that "It was basically accepted that Enron took care of Ralph. It's a smart way to cut campaign costs and tie people up[.]" MUR 5248, Complaint, Exhibit 1 at 1-2.

The same article reported that Rove acknowledged recommending Reed or his firm to an Enron lobbyist, but that Rove was not sure precisely when he had done so. Rove reportedly said, "I think I talked to someone before Ralph got hired. But I may have talked to him afterward . . . I'm a big fan of Ralph's, so I'm constantly saying positive things." *Id.* at 1. Reed said, in the article's words, that "he had had no idea that Mr. Rove or anyone else had spoken on his behalf,"

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1 and that even if he had known, it would not have "influenced his decision to support Mr. Bush."
2 *Id.* at 2-3. The article quoted Reed as saying that "'I was a friend and strong supporter for the
3 president based on my affection and high regard for him . . . I was going to be supporting
4 President Bush regardless.'" *Id.* at 3. The article also reported that "[o]ne Enron official,
5 speaking on condition of anonymity, said the company had hired Mr. Reed because it wanted a
6 big name from politics." *Id.*³

7 The day after the article appeared in the New York Times, Reed was interviewed on
8 CNN. He reiterated that he had no knowledge of Rove having recommended him to Enron, and
9 went on to say that "I checked back with one of the executives that I met with in September of
10 '97, he says that he never talked to [Rove]. He also talked to the other two executives that I met
11 with who made the decision about retaining Century Strategies. They never talked to [Rove]. So
12 [Rove] may well have talked to someone, but he didn't talk to the people who made the decision
13 regarding hiring my firm." Attachment 1 at 1 (transcript of interview from CNN web page).

14 **b. Responses to the Complaint**

15 Enron's response asserts that "no one from George W. Bush's presidential campaign,
16 including but not limited to Karl Rove, had anything to do with" Enron's decision to retain
17 Century. MUR 5248, Enron Response at 3. "Rather," Enron asserts, "Mr. Reed was selected
18 because of his reputation and skill as a grassroots organizer, a skill deemed necessary" by Enron

³ Other media accounts from early 2002 reported more generally that Enron regularly gave "consulting" contracts to a host of prominent figures from the worlds of politics, economics, and journalism. For example, according to one account in the Washington Post, "Enron [in the words of a participant] 'collected visible people' by gathering up pundits, journalists and politicians and placing them on lucrative retainers. For a couple [of] days spent chatting about current events with executives at Enron's Houston headquarters, advisers could walk away with five-figure payments." Joe Stephens, "Hard Money, Strong Arms and 'Matrix'; How Enron Dealt With Congress, Bureaucracy," Wash. Post, Feb. 10, 2002, at A1 (available on Westlaw at 2002 WL 10947277). Among the recipients of such Enron largesse, according to the article, were William Kristol of the Weekly Standard magazine; Paul Krugman, an economist who later became a columnist for the New York Times; Lawrence Kudlow of CNBC and the National Review magazine; and Paul Portnoy and Robert Grady, president and vice chairman, respectively, of the environmental organization Resources for the Future.

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1 in its efforts to build "grassroots support for electricity deregulation in Pennsylvania." *Id.* It also
2 asserts that

3 [t]he employees who signed the attached contracts with Century Strategies
4 interviewed Mr. Reed, decided to hire him, and supervised his consulting
5 activities. Those employees, who worked in the government or public affairs
6 departments of Enron, made the decision to hire Mr. Reed without the approval or
7 review of anyone else at Enron (other than legal review).
8

9 *Id.*⁴ In response to a request by this Office that it clarify the statement that no one from the Bush
10 "campaign" had anything to do with the determination to retain Reed and Century, Enron's
11 counsel stated that neither Rove nor any other representative of Bush "had any involvement in
12 Enron's decision-making process." Attachment 2 at 1 (letter from counsel). Counsel also
13 asserted that

14 the Enron employees who were involved in this process do not recall having any
15 communication with Mr. Rove or any person who represented Mr. Bush in his
16 capacity as a potential presidential candidate, nor do they recall being aware of
17 any communication encouraging them to hire Century Strategies and/or Ralph
18 Reed.
19

20 *Id.*

21 Enron further asserts that it had discussions with prominent Democratic strategist James
22 Carville concerning the public advocacy program it intended to pursue in Pennsylvania. MUR
23 5248, Enron Response at 3. Carville confirmed this in the New York Times article on which the
24 complaint was based. The article quoted Carville as saying, "I told [Enron] it wasn't the kind of
25 thing I do." MUR 5248, Complaint, Exhibit 1 at 2.

⁴ The Enron officials whose names appeared as signatories to the three contracts and one proposed contract attached to the Enron response were: Richard S. Shapiro, vice president for government affairs; Steven J. Kean, senior vice president for public affairs; and Mark A. Palmer, vice president for corporate communications. MUR 5248, Enron response at Exhibits A through D.

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Neither Reed's response nor the joint response of Rove and the General Committee addressed Rove's role in the initial contract.⁵

3. Work Performed by Century for Enron, October 1997- February 1999

Enron asserts that after its first contract with Century was executed on September 30, 1997, Century and Reed

launched an intensive direct mail, grassroots and telemarketing campaign to convince Philadelphia-area residents to support a proposal pending before the [Pennsylvania] Public Utility Commission for Enron to replace Peco Energy Company ("Peco") as the default electricity provider in Peco's service area. In fact, Mr. Reed outsourced some of the grassroots work to a Democratic consultant who was very familiar with Pennsylvania.

MUR 5248, Enron Response at 4.

Through counsel, Reed similarly asserts that

The Pennsylvania program included radio advertisements, direct mail, telemarketing, and collecting petition signatures. It involved hundreds of hours of work by a number of Century Strategies employees and consultants. These employees wrote telemarketing scripts, wrote and designed mail pieces, rented consumer lists, collected petition signatures, and organized consumer activities in Philadelphia.

MUR 5248, Reed Response at 2. Reed also asserts that "the work was similar in nature to work performed for other Century Strategies clients." *Id.*

Reed also discussed the Pennsylvania project in the interview he gave to CNN on January 26, 2002. The pertinent exchange between Reed and CNN correspondent Judy Woodruff reads as follows:

WOODRUFF: We know today because we did some checking, Mr. Reed, that Enron now has no electrical customers in the state of Pennsylvania, so what exactly were you doing for them back in '97?

⁵ A joint response was received on behalf of Rove and the General Committee; no response was received on behalf of the Primary Committee. The Primary and General committees received a single notification.

1 REED: Well what we were doing, Judy, was organizing consumers and citizens
2 and encouraging them to support a deregulation plan that was backed by
3 Governor Tom Ridge that would allow for more competition and more choice.
4 That plan became law. It was implemented by the Public Service Commission.
5 It's become a model for the nation, and it's lowered utility bills 5 to 10 percent,
6 and saved consumers in that state hundreds of millions of dollars. It was a great
7 success.

8
9 WOODRUFF: We were told that was signed into law in December '96.

10
11 REED: It was, but then there was a drawing up of regulations that implemented
12 that law, and those regulations were implemented by the Public Service
13 Commission.

14
15 Attachment 1 at 2.⁶

16 Contemporary media accounts generally support Enron and Reed's assertions. Jennifer
17 Brown, *Energy Companies Battle for Pa. Undecideds*, Associated Press, Nov. 18, 1997
18 (available at 1997 WL 4320550); Kathryn Kranhold, *Rattling Cages: Utilities' Quiet World Is*
19 *Shaken Up as Enron Moves on Philadelphia*, Wall St. J., Jan. 7, 1998 (available at 1998 WL-
20 WSJ 3478009); Earl Hazan, *Deregulation: The Show Goes On*, Transmission and Distribution
21 World, March 30, 1998 (available at 1998 WL 10140981); Daniel Fisher, *Consumer groups*
22 *unhappy with Enron's deregulation plan*, Bloomberg News, Apr. 14, 1998 (available at 1998
23 WL 11960536). One of the articles identified Reed as engineering a petition drive to urge then-
24 Pennsylvania Governor Tom Ridge to support Enron's proposal. Brown, *supra*; cf. Daily Energy
25 Briefing, *supra* (noting, without connecting Reed or Century to petitions, that "Enron has
26 produced 10,000 signatures urging Pa. Gov. Tom Ridge (R) to support its plan.") Other articles,
27 without stating that Reed or Century did the work, noted that Enron sent mail pieces to
28 "thousands of residents" in Southeastern Pennsylvania in response to Peco television ads.

⁶ The New York Times article on which the complaint is based also paraphrases Reed as saying that he was hired "mainly" to work on the Pennsylvania project. MUR 5248, Complaint, Exhibit 1 at 2.

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1 Kranhold, *supra*; Hazen, *supra*. The Pennsylvania Public Utility Commission decided the matter
2 on December 11, 1997, less than three months after Enron retained Century. Nelson Antosh,
3 *Ruling may give edge to Enron*, Houston Chron., Dec. 12, 1997 (available at 1997 WL
4 13077517).

5 Although it appears that Century continued to be paid under its contract with Enron after
6 December 11, 1997, it is unclear what, if any, services Century provided to Enron between that
7 date and the termination of the 1997 contract. Enron claims that "[f]ollowing completion of the
8 Pennsylvania grassroots project, Enron continued to seek Mr. Reed's advice relative to its efforts
9 to deregulate electricity markets in other states and, hence, made seven additional monthly
10 payments of \$9,500, totaling \$66,500. In February 1999, when Enron's need for Mr. Reed's
11 assistance at the state level waned, Enron terminated the contract." MUR 5248, Enron Response
12 at 4.

13 According to Enron's response, in February 1999 Enron sought to enter into a new
14 contract with Century at the considerably reduced fee of \$2,000 a month, and transmitted to
15 Reed a proposed contract to that effect. MUR 5248, Enron Response at 4 and Exhibit B.
16 However, Enron asserts, Century rejected the proposal, and Reed provided advice to Enron only
17 on an "infrequent, informal, and uncompensated" basis for the next year and a half. MUR 5248,
18 Enron Response at 4.

19 **4. Bush-Reed Relationship Prior to July 1999**

20 Reed told CNN in January 2002 that he had privately expressed to Bush as early as April
21 1997 an interest in assisting Bush if Bush determined to run for President:

22 . . . I met with George W. Bush in April of 1997 before obviously he had made
23 any kind of decision [about running]. And I said look, I don't know what you're
24 going to decide, but I want you to know I'm excited about you, and if you run, I
25 want to be on your team, and I want to help you in whatever capacity I can.

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Attachment 1 at 2.⁷ The New York Times article that formed the basis of the complaint reported that Reed had told a similar story, apparently on an earlier occasion, and that "from then on [after the 1997 meeting], Mr. Reed was an unpaid consultant to the Bush organization[.]" MUR 5248, Complaint, Exhibit 1 at 3.

One contemporary media account from 1998 reported that Reed met regularly with Bush under "an arrangement with the Texas Republican Party that enables him to travel to Austin once or twice a month and sit down with the governor." Jeffrey H. Birnbaum, *Here Comes the Son*, Fortune, June 22, 1998 (available at 1998 WL 250193). However, an examination of the Texas Republican Party's 1998 disclosure reports for its Federal account, which are on file with the Commission, and its non-Federal account, which are on file with the Texas Ethics Commission, shows no disbursements to Reed, Century or Capitol Media.

5. July 1999 To August 2000: Century Strategies Is Not Under Contract To Enron, But Becomes a Vendor To the Primary Committee

As noted, the Primary Committee registered with the Commission on March 8, 1999. The Primary Committee's disclosure reports show that by July of that year, Century Strategies was one of its vendors. The Primary Committee reported paying Century \$447,557.62 between July 1999 and April 2000; it described the overwhelming majority of these disbursements as made for "telemarketing," although one \$29,000 disbursement in November 1999 was described as for "direct mail." The Primary Committee also reported paying Capitol Media \$106,584.70 between January and April 2000 for "media expense."

⁷ While Reed now maintains he said this to Bush privately, he did not say quite the same thing publicly in 1997. On October 31, 1997, more than six months after the conversation recounted by Reed to CNN, The Hotline reported that Reed was quoted in a story in the Austin American-Statesman as saying, "I am looking for pro-family and pro-life and pro-free enterprise candidates at every level of government that I can assist. Governor Bush falls into that category. If they were to ask me to play some kind of role in their campaign, I would be honored by the request, and I would seriously look at it." *White House 2000 - Bush: The Doors. Breaking On Through?*, The Hotline, October 31, 1997 (emphasis added).

6. September 2000 and After: Century Is Once Again Under Contract to Enron

As noted, the second Enron-Century contract is dated October 6, 2000, and is retroactive to September 1, 2000. According to the Enron response, in September 2000 "Enron decided that it needed to increase its presence in Washington, D.C. . . . because the head of the Washington government affair's [sic] office had recently given his notice of resignation. To help in this effort regarding the Washington, D.C. office, Enron retained Mr. Reed" to provide the services enumerated in the second contract. MUR 5248, Enron Response, at 4.

Among these services were "advice and counsel" regarding "staffing the Washington government affairs office." MUR 5248, Enron Response, at Attachment C. To the extent this meant that Reed or Century provided advice concerning a replacement for the head of Enron's Washington office, that project would not have extended past October 11, 2000, when Enron announced that it had hired Linda Robertson, assistant secretary of the Treasury for public affairs and public liaison, as its vice president for federal government affairs. Judy Sarasohn, *Enron Hire Faces Some Partisan Fire*, Wash. Post, Oct. 12, 2000, at A23.

On October 23, 2000, or less than two weeks later, according to another press account, Century produced a seven-page memorandum for Enron describing a proposal to initiate a grassroots campaign in support of Federal legislation to deregulate the electric power industry. Joe Stephens, *Bush 2000 Adviser Offered To Use Clout to Help Enron*, Wash. Post, Feb. 17, 2002, at A1. In the memo, the Post reported,

Reed . . . not[ed] Enron had seen his "capabilities at work in the 1997 effort in Pennsylvania," where Reed helped Enron build support for electricity deregulation. "Since that time we have built a formidable network of grass-roots operatives in 32 states," he wrote. . . . Reed's memo stresses that his firm's "long history of organizing these groups makes us ideally suited to build a broad coalition" benefiting Enron.

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Id. The memo set forth two alternative plans, one of which Century offered to execute for Enron for \$386,500 and one that would cost Enron \$177,000.⁸ The article paraphrased Century Vice President Tim Phillips as saying that "Enron never finalized the specific lobbying job outlined in Reed's memo, but he declined to answer questions about what tasks Reed did carry out for the Houston company." *Id.*

7. Reed and Century In The 2000 Presidential General Election

The General Committee reported making only one payment to Century. That payment, of \$2,750 for "consultant expense/political" on December 20, 2000, satisfied a debt that had been outstanding since the previous August.

The Republican National Committee made payments to Century of \$1,875 for "Directories" on September 1; \$3,663.60 for "Voter Calls" on October 5; and \$7,000 for "Political Consultant" on November 17. All of these payments were allocated into Federal and non-Federal shares.

Moreover, according to Century's Web site, another of its related entities, "Millennium Marketing," which it describes as its in-house direct mail firm, "provided mailing services in key battleground states for George W. Bush . . . In fact, Millennium Marketing mailed over 7,000,000 pieces of direct mail for our ticket and state Victory 2000 efforts during the recent

⁸ Among the proposals in the memo were plans for:

*"20 'facilitating letters' to each of 17 members" of the congressional committees of jurisdiction, each letter to be signed by a third party individual important enough to the Member to ensure that the Member would personally read the letter, at a cost to Enron of \$170,000;

*Generation of "letters to the editor" supporting the legislation, each signed by "a prominent figure," that would appear in major newspapers, combined with a program of "blast-fax[ing]" copies of the letters, as printed, "to elected officials, opinion leaders and civic activists," at a cost to Enron of \$25,000;

*A telemarketing campaign that "would have cold-called citizens and offered to immediately patch them through to Congress," at a cost to Enron of \$79,500; and

*a program of "booking guests on talk radio shows," at a cost to Enron of \$30,000. *Id.*

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1 election cycle." Based on the reference to "Victory 2000," it appears that Century, through
2 Millennium, likely did substantial work that was compensated in allocated payments made
3 through Republican state committees; for example, on its Post-General report alone the Florida
4 Republican Party reported a payment to Millennium Marketing of \$57,921.36 in allocated money
5 for "direct mail."

6 In addition, news accounts from the period indicate that Reed may have appeared on
7 cable television talk shows as a semi-official spokesperson for the General Committee.⁹

8 C. Applicable Law

9 The Federal Election Campaign Act of 1971, as amended ("the Act"), prohibits any
10 corporation from making a contribution or expenditure in connection with a Federal election.
11 2 U.S.C. § 441b(a).¹⁰ It also prohibits knowing acceptance or receipt of such contributions. *Id.*
12 With certain exceptions not relevant here, Section 441b defines "contribution or expenditure" as
13 including "any direct or indirect payment, distribution, loan, advance, deposit or gift of money,
14 or any services, or anything of value[.]" 2 U.S.C. § 441b(b)(2). The term "contribution" also
15 includes "the payment by any person of compensation for the personal services of another person
16 which are rendered to a political committee without charge for any purpose." 2 U.S.C.
17 § 431(8)(a)(ii). The Commission's regulations interpret the term "anything of value" as
18 including "all in-kind contributions." 11 C.F.R. § 100.7(a)(1)(iii)(A).

19 Funds received or payments made solely for the purpose of determining whether an
20 individual should become a candidate for Federal office are neither contributions nor

⁹ Reports from The Hotline indicate Reed appeared on "Hardball" on MSNBC on September 5, October 2, October 23 and November 3, and on "The O'Reilly Factor" on the Fox News Channel on September 29.

¹⁰ All citations to the Act herein are to the Act as it read prior to enactment of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). All citations to the Commission's regulations herein are to the 2002 edition of Title 11, Code of Federal Regulations, which was published prior to the Commission's promulgation of any regulations under BCRA.

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1 expenditures. 11 C.F.R. §§ 100.7(b)(1)(i) and 100.8(b)(1)(i). However, only funds permissible
2 under the Act may be used for such activities. *Id.* Moreover, if the individual subsequently
3 becomes a candidate for Federal office, any such funds received or payments made become
4 contributions and expenditures, respectively, which are subject to the reporting requirements of
5 the Act and are to be reported as contributions or expenditures on the first disclosure report filed
6 by the candidate's authorized committee after the candidate becomes a candidate. 11 C.F.R.
7 § 101.3.

8 Political committees must file with the Commission reports of receipts and disbursements
9 pursuant to 2 U.S.C. § 434. In particular, each report must disclose, for the reporting period and
10 calendar year, the total amount of all receipts, 2 U.S.C. § 434(b)(2), and, among other things, the
11 total amount of contributions received from persons other than political committees,
12 2 U.S.C. § 434(b)(2)(A). At all times relevant hereto, the Act also required each report to
13 disclose the identification of, *inter alia*, each person (other than a political committee) who made
14 a contribution to the reporting committee during the reporting period, whose contribution or
15 contributions had an aggregate amount or value in excess of \$200 within the calendar year,
16 together with the date and amount of any such contribution. 2 U.S.C. § 434(b)(3)(A) (1998).¹¹
17 The term "identification" means, in the case of any person other than an individual, the full name
18 and address of such person. 2 U.S.C. § 431(13)(B). Further, the Act requires committees to
19 report, for the reporting period and calendar year, the total amount of all disbursements, 2 U.S.C.
20 § 434(b)(4), and, among other things, the total amount of expenditures made to meet candidate or
21 committee operating expenses. 2 U.S.C. § 434(b)(4)(A). At all times relevant hereto, the Act

¹¹ Section 641 of Public Law 106-48, enacted in 1999, amended 2 U.S.C. § 434(b) to require authorized committees of candidates for Federal office to aggregate and report their receipts and disbursements on an election-cycle-to-date basis, rather than a calendar-year-to-date basis. However, these amendments were effective only for reports due to be filed later than December 31, 2000.

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1 also required each report to disclose, *inter alia*, the name and address of each person to whom an
2 expenditure in an aggregate amount or value in excess of \$200 within the calendar year was
3 made by the reporting committee to meet a candidate or committee operating expense, together
4 with the date, amount, and purpose of such operating expenditures. 2 U.S.C. § 434(b)(5)(A)
5 (1998). Committees receiving in-kind contributions are required to report the receipt and
6 consumption of in-kind contributions as contributions received and expenditures made,
7 respectively. 11 C.F.R. § 104.13(a).

8 **D. Analysis**

9
10 The complaint's central legal allegation is that "[t]he benefit derived by the Bush-Cheney
11 campaigns from [the] Rove-Reed-Enron arrangement may constitute and [sic] 'in-kind' ...
12 contribution[.]" MUR 5248, Complaint at 4. The complaint also alleges that "[t]he failure of
13 Bush for President, Inc. and/or Bush-Cheney 2000, Inc. to report the Rove-Reed-Enron
14 contribution to their campaign appears to be in violation of 2 U.S.C. § 434(b)[.]" *Id.*¹² The
15 complaint cites the comments of former Commissioner Trevor Potter in the same New York
16 Times article from which it draws its factual allegations. *Id.* According to the article, "Mr.

¹² The complaint alleges not merely that the Primary and General Committees failed to report the receipt of in-kind contributions from Enron, but that they failed to report corresponding disbursements to Enron as "offsets" to contributions. MUR 5248, Complaint at 4-5. The joint response of Rove and the General Committee points out that in previous matters, the Commission has found a similar "offset" reporting theory advanced by these complainants to be without merit as a matter of law. MUR 5248, Rove and Bush-Cheney Response at 3 (citing MURs 5194 and 5206). However, in this matter, the complaint ties the reporting allegations to an alleged *in-kind* contribution, rather than alleged contributions of money. By so doing, it comes closer to getting the general principle correct, even though it cites the wrong reporting requirement. As noted in the main text, candidates receiving in-kind contributions are required to report the receipt and consumption of in-kind contributions as contributions received and expenditures made, respectively. 11 C.F.R. § 104.13(a). However, the consumption of the in-kind contribution is to be reported as an operating expenditure, not as an "offset" to the contribution.

Complainants also include the text of 18 U.S.C. § 600, and cite to a Ninth Circuit case applying that statute, but fail to spend so much as a sentence explaining how that authority applies to this case. And, indeed, it does not. As the joint response of Rove and the General Committee points out, 18 U.S.C. § 600 prohibits the provision of employment or other benefit made possible by Federal statute to any person in exchange for political activity. Not only is this criminal statute not within the Commission's jurisdiction, but there do not seem to be any facts in this matter that have anything to do with the provision of a Federal benefit to Reed personally, to Century, or to Enron.

Potter said Mr. Reed's hiring could have been a violation of federal election law if it turned out that 'it was a backdoor way of getting him extra compensation for the time he was spending on Bush activity.'" *Id.* at Exhibit 1.

Because Enron was incorporated, it was prohibited from making any contribution to either the Primary Committee or the General Committee. 2 U.S.C. § 441b(a). Likewise, it was prohibited from making any payments to or on behalf of Bush in connection with Bush's "testing the waters" for a presidential campaign. 11 C.F.R. §§ 100.7(b)(1)(i) and 100.8(b)(1)(i). Specifically, as a corporation Enron was prohibited from providing Bush or the Primary and General Committees with "anything of value" "in connection with" the presidential election or an effort to "test the waters" for that election; and most specifically, it was prohibited from compensating Century, Reed, or anyone else, for services they provided to Bush or his committees without charge. 2 U.S.C. § 441b(a); 2 U.S.C. § 431(8)(A)(ii) (compensation for personal services provided without charge to committee is a contribution); 11 C.F.R. § 100.7(a)(1)(iii)(A) ("anything of value" includes all in-kind contributions of any variety of good or service). Thus, by alleging an in-kind contribution, the complaint essentially alleges that Enron engaged Century at least partly "in connection with" the 2000 presidential election, or an effort to test the waters for that election.

However, the available information points to the conclusion that Enron would have retained Century Strategies irrespective of the 2000 presidential election or of Bush's testing the waters for that election.¹³ See MUR 4944, Statement of Reasons at 1, 2 (where there is

¹³ The first Enron-Century contract is dated September 30, 1997, or more than 17 months before the Primary Committee registered with the Commission. As the response of Rove and the General Committee points out, "then-Governor Bush had not [at that time] declared that he would seek reelection as Governor of Texas" in 1998, much less that he would run for President in 2000. If Bush was not yet even testing the presidential waters while Century was being paid by Enron, there would be no possible link between those payments and any statute or regulation within the Commission's jurisdiction. However, some media accounts indicate that by some time in 1998, or (Footnote continued on following page)

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1 insufficient nexus between transaction and campaign, or where transaction involved payments
2 that would have been made “irrespective of the candidacy,” transaction is not “in connection
3 with a Federal election” and cannot be contribution or expenditure).

4 Enron flatly denies that it retained Century for any reason relating to the 2000
5 presidential election or Bush’s testing of the waters for that election. It stated that “no one from
6 George W. Bush’s presidential campaign, including . . . Rove, had anything to do with” the
7 retention of Century. Asked to clarify that statement in light of the appearance that Bush was at
8 most testing the waters in late 1997 and early 1998, it stated that neither Rove nor any other
9 representative of Bush “had any involvement in Enron’s decision-making process.”

10 Other facts support the conclusion that Enron’s retention of Century was irrespective of
11 Bush’s testing the presidential waters. First, Century appears to have done substantial *bona fide*
12 work for Enron on the “Pennsylvania project” under the first contract. This work apparently
13 included generating 10,000 signatures on a petition to Governor Ridge urging him to support
14 Enron’s position in Enron’s dispute with Peco before the state Public Utility Commission. It
15 may also have included creating direct mail pieces sent to households in Southeastern
16 Pennsylvania in response to Peco television advertising. Although this work appears to have
17 been completed within the first three months of the contract, and Century apparently continued
18 to receive payments for several months thereafter despite doing little or no additional work for

perhaps even as early as 1997, Bush or persons acting on his behalf may have begun “testing the waters.” R.G. Ratcliffe, *Being rich in details propels Bush’s race*, Houston Chron., July 18, 1999 (available on Westlaw at 1999 WL 4001524) (quoting a Bush fundraiser as saying that as early as 1997 “[w]e had some early meetings to talk about (running for president) in generic terms,” and asserting that by June 1998 Bush had “secretly slated” a former U.S. Representative (who ultimately did not take the position) to serve as campaign manager); Birnbaum, *supra* (reporting that “behind the scenes, Bush has for months been reaching out to close friends, longtime associates, and family members,” apparently including Reed, “to discuss how to handle a [presidential] campaign.”)

This report takes no position regarding whether Bush was “testing the waters” in 1997 or 1998. Rather, it argues that Enron’s retention of Century appears to have been irrespective of any such effort even if it existed.

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1 Enron, the contract provided that "early success in this representation" would not result in "early
2 termination." Moreover, as noted *supra* at n.3, it was apparently a common practice for Enron to
3 pay prominent figures in politics, journalism, and economics – figures not alleged to have been
4 connected to any candidate for Federal office -- substantial sums of money for considerably less
5 work than Reed and Century actually did for Enron. Thus, Century's continuing to be paid by
6 Enron throughout 1998 is, under the circumstances, unremarkable.¹⁴

7 Second, the article on which the complaint was based indicates that Enron also
8 approached James Carville to do the work that Century ultimately did. Enron apparently
9 approached Carville at least roughly at the same time as it approached Reed, and the fact that
10 Carville turned Enron down indicates that Enron may have approached him first. Enron's
11 approaching Carville at all, and particularly the indication that Carville may have been
12 approached first, further supports the contention that in mid-to-late 1997 Enron was legitimately
13 seeking a vendor who could bring the tactics of political campaigning to bear on a regulatory
14 issue, rather than knowingly hiding payments to a Bush operative under a sham contract.

15 Third, the further course of dealing between Century and Enron indicates that the
16 ongoing relationship between the two firms was *bona fide* rather than campaign-related.

17 The circumstances surrounding the termination of the first contract indicate that the
18 Enron-Century relationship was *bona fide*. According to Enron, the initial Century-Enron
19 contract was terminated in February 1999, only a month before the Primary Committee
20 registered with the Commission. Had the Enron-Century relationship been a sham designed to

¹⁴ It is also entirely possible that the amount paid by Enron to Century between September 1997 and February 1999 reflected the fair market value of the services Enron provided to Century over the first three months of the contract period. However, in the absence of any evidence about what Century charged similarly situated clients for similar work, or about what other firms would have charged Enron for similar work, it is impossible at this point to draw a conclusion.

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1 disguise in-kind contributions from Enron to Bush, one might have expected one of two things to
2 happen. In the first instance, one might have expected Enron to continue to retain Century at the
3 same rate of payment, or perhaps even a higher rate given that Century would likely have done
4 more work as the primary election campaign heated up. But that did not happen. Alternatively,
5 with the Primary Committee almost established and able in its own right to retain Century as a
6 vendor, one might have expected Enron simply to fade quietly from the scene. But that did not
7 happen either. Instead, Enron offered Century a new contract at a considerably reduced rate, and
8 Century rejected the offer.

9 Moreover, the Enron-Century relationship under the second contract appears to have been
10 *bona fide*. The second contract was executed in the fall of 2000, in the middle of the general
11 election campaign. Were it a sham, one might have expected Century to have done no work
12 under the contract, and for payment under the contract to run only through the general election.
13 Instead, Century appears to have begun its work under this contract by preparing a memo for
14 Enron outlining a strategy to generate grassroots support for a Federal electricity deregulation
15 bill. As described in the Washington Post, the memo appears to have been a significant work
16 product, drafted with some care, that drew on Century's expertise. Additionally, the relationship
17 under this contract extended into 2001, well after the 2000 general election. Finally, Enron and
18 Century entered into a third contract that was to have covered the latter part of 2001 and into
19 2002. This is also not a development one would have expected if the relationship between the
20 two firms had not been genuine.

21 The evidence on the other side of the issue consists of three sets of facts, or inferences
22 from them. First, there are the statements of the two anonymous sources quoted in the New
23 York Times article. Second, there is Rove's statement in that article that he thinks he talked to

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1 someone at Enron about Reed but could not remember who or when, and the corresponding lack
2 of recollection of any relevant communications professed through counsel by the relevant Enron
3 executives. Finally, there are whatever inferences may be drawn from a combination of the 1998
4 Fortune magazine report that Reed apparently made several trips to Texas to meet with Bush
5 during that year, this Office's inability to readily confirm from disclosure reports the article's
6 assertion that the Texas Republican Party paid for those trips, and the appearance that Century
7 continued to be paid by Enron during 1998 for little or no work. However, in view of the other
8 evidence, none of these facts or inferences provides reason to believe that any respondent
9 violated the Act.

10 First, the statements of the sources in the New York Times article are problematic
11 because they are anonymous; because they are double hearsay; and because the motive at least
12 one source supposedly attributed to Rove – i.e., ensuring Reed's loyalty to Bush in the upcoming
13 campaign while avoiding public relations problems stemming from Reed's past employment at
14 the Christian Coalition – seems implausible. The implausibility arises given Reed's statement to
15 CNN that as early as April 1997 he had committed to support Bush if Bush ran for president, and
16 given that Reed's connection to the Bush campaign once Century formally began work for Bush
17 was fairly high profile.¹⁵

18 Second, given the passage of time, nothing is inherently incredible about the apparent
19 failures of recollection by either Rove or the three Enron executives.

¹⁵ It became public that Reed supported Bush no later than June 1999, when the National Review published an article in which Reed described Bush as "the most electable conservative . . . in a generation." The Hotline, *White House 2000 – Bush: Hill GOPers Urge Less Foreign Policy Talk*, June 24, 1999. Reed was identified as a Bush "adviser," speaking of the campaign in the second person, by August 1999. The Hotline, *White House 2000 – Bush: Campaign Sent Out Cocaine Talking Points*, August 20, 1999.

1 This leaves the question of the inferences to be drawn from the timing of Reed's reported
2 consultations with Bush in 1998 and Century's apparent lack of work for the money it received
3 from Enron in the same year. However, any speculation that could be drawn from these facts is
4 negated by the other evidence just recounted indicating that Enron's original retention of Century
5 was *bona fide*. *Supra* at 19-20 (facts appear to explain period when Century was paid by Enron
6 for little or no work). And if one concludes that Enron's original retention of Century was *bona*
7 *fide*, the only other way a contribution could have occurred would have been for Enron somehow
8 to have found out at some later time that Reed was consulting for Bush and to have expressly
9 decided to continue to pay Century to cover the costs of that consultation – all assuming as well
10 that Reed's consultations with Bush involved a potential presidential campaign. However, no
11 evidence of any such later discovery and decision by Enron is apparent from this record.

12 Likewise, there is no evidence that when Enron resumed its relationship with Century in
13 September 2000, that resumption of the relationship was in any way connected to the general
14 election campaign.

15 Therefore, this Office recommends the Commission find no reason to believe that any
16 respondent (including Bush-Cheney 2000, Inc. and David Herndon, as treasurer, Bush for
17 President, Inc. and David Herndon, as treasurer, Enron Corporation, Ralph E. Reed and Karl
18 Rove) violated any provision of the Act in connection with this matter.

19
20 **IV. RECOMMENDATIONS**

21 1. Find no reason to believe that Bush-Cheney 2000, Inc. and David Herndon, as
22 treasurer, Bush for President and David Herndon, as treasurer, Enron Corporation, Ralph E. Reed
23 and Karl Rove violated any provision of the Act in connection with this matter.

24
25 2. Approve the appropriate letters.
26
27

5570-904-40-32

3. Close the file.

Date

2/6/03

Lawrence H. Norton
General Counsel

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for Enforcement

Mark D. Shonkwiler
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Attachments:

1. Interview transcript, CNN, Judy Woodruff and Ralph E. Reed, January 26, 2002
2. Letter, counsel for Enron to staff, January 9, 2003

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